IN THE HIGH COURT OF JUDICATURE AT PATNA

Cr.Misc. No.22911 of 2007

RAMPRIT RAM, S/o late Akalu Ram, R/o village Jainagar, P.S. Nautan, District West Champran …….. Petitioner

Versus

1. STATE OF BIHAR
2. Ramadhar Paswan, S/o Late Harihar Paswan, R/o village Sunarpatti, P.S. Nautan, District – West Champaran.

….. Opp. Parties.

For the petitioner : Mr. Sanjeev Kumar No. 1, Advocate
For the State : Dr. Mayanand Jha, A.P.P.
For O.P. No. 2 : Mr. Umesh Chandra Verma, Advocate

O R D E R

3 15.10.2008 Through this application the petitioner who has been arrayed as the sole accused in Complaint Case No. 1351C of 2004, has prayed for the quashing of the entire criminal proceeding arising out of the said compliant case including the order dated 29.10.2005 passed by Sri Sanjay Kumar, Judicial Magistrate, Bettiah, wherein he has taken cognizance of offence under section 420 and 467 I.P.C. against the petitioner.

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According to the complainant his mother Mostt. Manakiya executed a conditional sale deed on 15.10.1985 in favour of the accused persons, wherein it was agreed upon that the land would be returned after return of the consideration amount and on execution of the said deed the accused came in possession over the said land. It is stated that the complainant's mother the executant of the deed died on 15.3.1986, whereafter the complainant arranged for the money and contacted the accused with request for return of the land in accordance with the agreement, but the accused refused to return

the same on the ground that subsequently the complainant's mother had executed an absolute sale deed in his favour. It is said that the complainant made inquiries and came to know that on 19.8.1988 the accused person brought into existence a registered sale deed in respect of the land in question which was purported to have been executed by his mother in favour of the accused. Since the complainant's mother had died in the year 1986 the present sale deed dated 19.8.1988 was apparently a fraudulent one purportedly brought into existence by some other woman impersonating as his mother.

It has been submitted by the learned counsel for the petitioner that prior to the filing of the instant complaint one Aspatali Paswan, cousin of the present complainant, claiming to be the *karta* of the undivided Hindu family, had, during the minority of the present complainant, filed Complaint Case No. 3078 C of 2002 before the learned Chief Judicial Magistrate, West Champaran at Bettiah, which in due course was transmitted to the concerned P.S. under section 156(3) Cr.P.C. on the basis whereof Bettiah Town P.S. Case No. 45 of 2003 was registered under sections 420, 467, 468 and 406 I.P.C against the present petitioner and some other persons and the police after due investigation submitted a final form stating the occurrence to be untrue and the said final form was accepted by the learned Chief Judicial Magistrate, West Champaran at Bettiah on 20.11.2004 and the proceeding was thereby closed.

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The learned counsel sought to submit that the complaint petitions both by Aspatali Paswan and the present complainant were

identical in nature and related to the same cause of action and occurrence and when once after due investigation a final form was submitted which was accepted by the Court and no challenge was laid thereto the same order had become final and the petitioner could not be subjected to double jeopardy in respect of the same set of facts and occurrence.

The learned counsel for O.P. No. 2 sought to submit that there was no bar to filing of a second complaint and since the petitioner was a minor when the first complaint had been filed he was at liberty, on gaining majority, to file a complaint in respect of the same facts and occurrence.

It is true that there is no bar to the filing of a second complaint but when the facts stated in the first complaint has already been the subject matter of investigation by the police which ended in the submission of a final form as the allegation was found to be false. Resort to a second complaint on the same set of facts and occurrence by another person would definitely amount to an abuse of the process to the Court since it would amount to reopening of the earlier police case arising out of the earlier complaint petition which had attained finality.

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In the facts and circumstances of the case I am of the opinion that continuance of the criminal proceeding against the petitioner would amount to an abuse of the process of the Court and the same calls for interference in exercise of powers under section 482 Cr.P.C. .

Accordingly I allow the application and quash the entire

criminal proceeding as against the petitioner arising out of complaint case no. 1351C of 2004.

Spd/- **(Abhijit Sinha, J.)**

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